

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

AMBER JACKSON,

Plaintiff,

v.

CITY OF ATLANTA, GEORGIA;
OFFICER CODY SWANGER, in his
individual capacity; and OFFICER
JEREMIAH BRANDT, in his individual
capacity,

Defendants.

Civil Action No.:

1:21-cv-02578-MHC

**PLAINTIFF’S BRIEF IN OPPOSITION TO DEFENDANT CITY OF
ATLANTA’S MOTION TO DISMISS**

COMES NOW, Plaintiff Amber Jackson, by and through her attorneys, and submits the following Brief in Opposition to the Defendant City of Atlanta’s Motion to Dismiss (“Motion”). For the reasons set forth below, Plaintiff requests that this Court deny the Defendant’s Motion in its entirety.

SUMMARY OF FACTS OF UNDERLYING LITIGATION

This case arises out an incident which occurred on May 30, 2020 at Lenox Square Mall when Plaintiff Amber Jackson suffered a broken clavicle as a result of being thrown onto concrete pavement by Defendant Officer Swanger after Defendants Swanger and Brandt stopped her vehicle based on observing her relocate an orange traffic cone several feet so that she could exit the Mall. Ms. Jackson's injuries required her to undergo surgery and subsequent physical rehabilitation. The Defendant officers charged Ms. Jackson with disorderly conduct, a charge that was subsequently dismissed. During the ensuing Internal Affairs investigation, Defendants Swanger and Brandt admitted that they had observed Ms. Jackson commit no crime, that their incident report contained intentionally false information, and that excessive force had been used against Ms. Jackson. This lawsuit ensued.

SUMMARY OF PLAINTIFF'S ARGUMENT

Plaintiff's original and amended complaints set forth claims for unlawful seizure of her person, excessive force in violation of federal law, Monell liability against Defendant City of Atlanta, and various state law claims against the individual Defendant officers. Plaintiff has filed contemporaneously herewith her First Amended Complaint within the extended time for her to respond to the Defendant

City of Atlanta's Motion. Plaintiff submits that her First Amended Complaint renders moot the Defendants' Motion.

SUMMARY OF THE DEFENDANTS' ARGUMENT

Defendant City of Atlanta ("Defendant COA") argues that the Plaintiff's pleadings fail to state a claim against it and that the Plaintiff's claims should be dismissed in their entirety as to it.

DEFENDANT COA'S MOTION TO DISMISS IS MOOT AND SHOULD BE DENIED

Plaintiff has timely filed a First Amended Complaint in answer/response to the Defendants' Motion to Dismiss. The Defendants' Motion to Dismiss is based on the Plaintiff's Original Complaint and refers exclusively to alleged pleading deficiencies in it. It does not directly address the allegations of the Plaintiff's First Amended Complaint as the Plaintiff's First Amended Complaint contains additional facts and proceeds under additional legal theories.

"As a general rule, an amended complaint supersedes an original complaint," Malowney v. Fed. Collection Deposit Grp., 193 F.3d 1342, 1345 n.1 (11th Cir. 1999). Once an amended complaint is filed "the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his

adversary,” Dresdner Bank AG v. M/V Olympia Voyager, 463 F.3d 1210, 1215 (11th Cir. 2006).¹

An amended complaint renders moot the motion to dismiss the original complaint because that motion seeks to dismiss a pleading that has been superseded. A pleading superseded by an amended complaint is entirely irrelevant, rendering moot the motion to dismiss the original complaint, Renal Treatment Ctrs. – Mid-Atlantic, Inc. v. Franklin Chevrolet-Cadillac-Pontiac-GMC, No. 608CV87, 2009 U.S. Dist. LEXIS 30975, 2009 WL 995564, at *1 (S.D. Ga. Apr. 13, 2009). “It is well-established that an amended complaint supersedes an original complaint and renders the original complaint without legal effect,” Id.; Sholes v. Bd. of Regents of the Univ. Sys. of Ga., 2021 U.S. Dist. LEXIS 33681 at *4 (Feb. 23, 2021)(where an amended complaint is filed it becomes the operative pleading and renders moot a motion to dismiss); Horton v. Reeves, No. CV 118-165, 2019 U.S. Dist. LEXIS 166884, 2019 WL 4748002 at *1 (S.D. Ga. Sept. 27, 2019)(denying as moot motion to dismiss original complaint where plaintiff filed an amended complaint).

¹ Plaintiff’s First Amended Complaint does not adopt or incorporate the original complaint and as such, falls within the general rule that it supersedes the original complaint, Schreane v. Middlebrooks, 522 Fed.Appx. 845, 848 (11th Cir. July 2, 2013).

CONCLUSION

In light of the Plaintiff's First Amended Complaint, the Defendant City of Atlanta's Motion to Dismiss is moot and should be denied.

This 15th day of October, 2021.

Respectfully submitted,

/s/ Harold W. Spence

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CERTIFICATE OF SERVICE AND CERTIFICATE OF COMPLIANCE
WITH LOCAL RULE 5.1

I certify that on this date, I electronically filed this PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT CITY OF ATLANTA’S MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system (which document was prepared using Times New Roman, 14-point type, one of the font and point selections approved by the Court in N.D. Ga. L. R. 5.1(C)), which will automatically send e-mail notification of such filing to the following attorneys of record:

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This 15th day of October, 2021.

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